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FACEBOOK, INC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 FACEBOOK, INC.,

14 Plaintiff,

15 v.

16 POWER VENTURES, INC., a Cayman Island
corporation; STEVE VACHANI, an individual;
17 DOE 1, d/b/a POWER.COM, DOES 2-25,
inclusive,

18 Defendants.
19

Case No. 5:08-cv-05780 JW (JCS)

**DECLARATION OF MONTE COOPER
IN SUPPORT OF FACEBOOK INC.'S
CROSS-APPLICATION FOR THE
ENTRY OF DEFAULT JUDGMENT**

Dept: Hon. James Ware
Judge: 15, 18th Floor

1 I, Monte Cooper, hereby declare and state as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 of record to Facebook, Inc. in the above-captioned matter. I am a member in good standing of the
4 Bars of the States of California and Colorado. I make this declaration based on my personal
5 knowledge, unless otherwise noted. If called, I can and will testify competently to the matters set
6 forth herein.

7 2. Attached hereto as **Exhibit 1** are excerpts from the hearing transcript of the
8 February 24, 2012 hearing regarding Facebook's motion to compel.

9 3. Attached hereto as **Exhibit 2** is an email from Monte Cooper to Timothy Fisher
10 dated May 22, 2012.

11 4. On February 24, 2012, this Court held a telephonic discovery hearing on three
12 discovery motions to compel filed by Facebook (Dkt. Nos. 265, 267 & 269). At that hearing, the
13 Court sanctioned Power Ventures, Inc. and ordered that Facebook be reimbursed for taking a
14 second deposition of Power Ventures, Inc. pursuant to Federal Rule of Civil Procedure 30(b)(6).

15 5. On May 22, 2012, I forwarded to Defendants' counsel Facebook's demand that it
16 be reimbursed in the approximate amount of \$23,000 the costs and attorneys fees awarded by the
17 Court at the February 24, 2012 discovery hearing. Defendants' counsel did respond with any
18 payment on behalf of Defendants, and instead moved to withdraw as Defendants' counsel on June
19 4, 2012. That motion was granted by the Court in an Order dated July 2, 2012 (Dkt. No. 306).
20 To date, Facebook has not been reimbursed its Court-ordered costs and attorneys fees awarded to
21 the company during the February 24, 2012 telephonic discovery hearing.

22 6. On August 6, 2012, the parties appeared before this Court for a show cause
23 hearing that this Court ordered to determine why default should not enter against Defendant
24 Power Ventures, Inc. for failure to retain new counsel. Defendant Steve Vachani, the Chief
25 Executive Officer for Power Ventures, Inc., informed the Court at the August 6, 2012 hearing that
26 he personally was proceeding *in propria persona*. He further informed the Court that Defendant
27 Power Ventures, Inc. had not retained counsel to represent it as of that date.
28

7. Appearing in Court on August 6, 2012 Vachani did not provide any explanation for Power Ventures' delay in retaining substitute counsel between June 4, 2012 and August 6, 2012.

8. At the August 6, 2012 show cause hearing, I as Facebook's counsel orally moved for the entry of default, and further requested that default judgment also be entered in Facebook's favor against Power Ventures in the amount of \$18,238,643.00, with only the amount of punitive damages and the form of permanent injunction subject to further proceedings. I further apprised the Court that Power Ventures had been on notice of the need to engage substitute counsel since at least June of 2012, when its former counsel moved to withdraw.

9. Because the payment of the Court-ordered costs and attorneys fees for the March 7, 2012 Rule 30(b)(6) deposition of Power Ventures remained outstanding, I also requested that in the event the Court were inclined to set aside default and/or permit new counsel to appear on Power Ventures' behalf, that such entry of appearance at least be conditioned on the immediate payment of Facebook's Court-awarded costs and attorneys fees.

10. At the direction of the Court, which struck the Answer of Power Ventures by Court Order dated August 8, 2012, the Clerk of the Court entered default against Power Ventures on August 9, 2012. Facebook previously provided substantial evidence that it was entitled to \$18,238,643.00 in damages for Defendants' violations of the CAN-SPAM Act (CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.*), the Computer Fraud and Abuse Act (CFAA, 18 U.S.C. § 1030), and California Penal Code § 502(c).

11. Solely for purposes of this Application, Facebook will waive its right to recover punitive damages so that a final judgment can be entered against Power Ventures.

12. Facebook has requested an official transcript of the August 6, 2012 show cause hearing, and will supplement this Declaration with that transcript once it is prepared.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 27th day of August 2012 at San Francisco, California.

/s/ Monte Cooper /s/
MONTE COOPER